

## Chapter 3-2 Sales and Use Tax

Last Updated Friday, 28 April 2006

Boulder Revised Code, 1981 Print this page in landscape for best results

Adopted by Ordinance No. 4575. Amended by Ordinance No. 4593. Derived from Ordinance Nos. 2803, 2955, 2974, 3110, 3133, 3278, 3288, 3330, 3501, 3662, 3881, 4335, 4388, 4396, 4406, and 4448.

### 3-2-1 Legislative Intent.

(a) It is the intent of the city council in enacting this chapter that every person in the city who purchases at retail, leases, consumes, stores, or puts to any use any tangible personal property or taxable services is exercising a taxable privilege. All sales, leases, and purchases of tangible personal property and taxable services defined in this chapter are taxable unless specifically exempted in this chapter<sup>2</sup>. The sales tax imposed on tangible personal property by this chapter applies to each transfer of ownership, possession, and control of such property and may occur more than once during the life of the property<sup>3</sup>.

(b) The sales tax is a transaction tax levied upon all sales, purchases, and leases of tangible personal property and taxable services sold or leased by persons engaged in business in the city and is collected by the vendor or lessor and remitted to the city<sup>4</sup>. The use tax is levied upon the privilege of persons in the city to use, store, or consume tangible personal property located in the city and taxable services purchased or leased at retail and furnished within the city, whether purchased or leased inside or outside the city limits, and not subject to the sales tax imposed by this chapter. The use tax is remitted to the city by the person using, storing, or consuming the tangible personal property or taxable services. The use tax is a complement to the sales tax, and its purposes are to equalize competition between in-city and out-of-city vendors and lessors of tangible personal property and services and to eliminate incentives for city residents to leave the city to purchase or lease tangible personal property and taxable services.

<sup>1</sup>Security Life & Acc. Co. v. Temple, 492 P.2d 63 (1972).

<sup>2</sup>Bedford v. Hartman Bros. 104 Colo. 190, 89 P.2d 584 (1939).

<sup>3</sup>See J.A. Tobin Construction Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965).

### 3-2-2 Imposition of Tax.

(a) On and after 11:59 p.m., December 31, 1967, there is hereby levied and there shall be collected and paid a sales or use tax on the full purchase price paid or charged for tangible personal property and taxable services purchased or sold at retail by every person exercising a taxable privilege in the city by the sale or use of such property and services. The sales tax is levied on all sales of tangible personal property or taxable services, except those specifically exempted and is collected by the vendor and remitted to the city. The use tax is levied upon the privilege of using in the city, personally or as part of rendering a service, tangible personal property or taxable services upon which a municipal sales or use tax has not been paid and is paid by either the vendor doing business in the city or the consumer. The following paragraphs prescribe rules for various taxable transactions:

(1) If tangible personal property is purchased for use exclusively in the rental or leasing business and is not at any time used for the purchaser's general business or personal use, use tax is not due upon the purchase of the tangible personal property, but a sales tax is due upon the rental or leasing of tangible personal property used in the rental or leasing business, regardless of whether a sales or use tax has been paid upon a previous purchase of the property.

(2) A resident of the city shall pay sales tax upon the purchase price paid or charged for automotive vehicles purchased for use or storage in the city. A resident of the city shall pay use tax under this chapter upon the purchase price paid or charged for automotive vehicles purchased outside of the city for use or storage within the city. No person may register an automotive vehicle for which registration is required until such person has paid all sales or use taxes due on the purchase of the vehicle. No resident shall register a vehicle at an address other than such resident's principal residence

or place of business within the city for the purpose of evading the sales or use tax imposed by this chapter.

(3)A use tax is not due upon a registered vehicle used in the city by a business if the vehicle is registered to a bona fide business address outside the city.

(4)Motor vehicles used by automobile dealers for demonstration are exempt from use tax if each such vehicle is available for and in fact used by licensed sales personnel of the dealership for the promotion of business of selling vehicles. Vehicles used in the dealer's service or repair business are subject to a use tax. Demonstrator vehicles are subject to a sales tax when they are sold, regardless of whether a use tax has been paid for their use. Use tax is based upon the dealer's net invoice price of the vehicle. To be entitled to claim an exemption for demonstration vehicles, a taxpayer shall file with the sales tax return a certification of the use of all demonstration vehicles used in the business<sup>1</sup>.

(5)A use tax is due upon tangible personal property that is utilized in the city if such use occurs within three years of the most recent sale of the property. No use tax shall be due on the use of tangible personal property within the city that occurs more than three years after the most recent sale of the property if, within three years following the date of such sale, the property has been significantly used within the State for the principal purpose for which it was purchased.

(6)The purchaser of tangible personal property acquired with the purchase of a business for use in the operation of such business shall pay a sales tax upon the purchase price of such property recorded in the bill or contract of sale, but in no event shall the tax be based upon a valuation of property less than its fair market value. If the purchase price of the property is not itemized in the bill or contract of sale, the tax shall be based upon the book value that the purchaser uses for income tax depreciation or upon the fair market value of the property if no book value has been established. Regardless of the method used to value the property, no deduction shall be made on account of any outstanding liabilities acquired by the purchaser of the business and property.

(A) Purchasers of a business are liable to pay all unpaid sales or use taxes of the seller of the business, if the purchasers have acquired the furniture, fixtures, and equipment of the business and engage in a similar business.

(B) Consumers from the business to be purchased who have accounts upon which sales or use tax is outstanding at the time of purchase of a business shall pay that tax at or before the time of sale.

(7)Whenever tangible personal property, including property sold in conjunction with the sale of a business, is sold under a conditional sales contract, lease-purchase contract, or capital lease contract, whereby the vendor or lessor retains title as security for all or part of the purchase price or whenever the vendor retains a chattel mortgage on such tangible personal property to secure all or part of the purchase price, the sales tax is immediately due and payable upon the total selling price. There is no refund or credit for either party to the transaction if the property is repossessed by the vendor.

(8)A sales tax is due upon the purchase price paid for the transmission of intrastate electronic messages as defined in paragraph 3-1-1(z)(1), B.R.C. 1981.

(9)Construction equipment that is located within the city for a period of more than thirty consecutive calendar days shall be subjected to the full applicable use tax of the city.

(10)Construction equipment that is located within the city for a period of thirty consecutive days or less shall be subjected to the city's use tax in an amount calculated as follows: the purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one and the denominator of which is twelve, and the result shall be multiplied by the tax rate set forth in Section 3-2-5, "Rate of Tax," B.R.C. 1981.

(11)Where the provisions of paragraph (10) of this subsection are utilized, the credit provisions of Subsection 3-2-9(b), B.R.C. 1981, shall apply at such time as the aggregate sales and use taxes legally imposed by and paid to other municipalities organized and existing under the authority of the Constitution or laws of the State of Colorado on any such equipment is equal to the tax that would otherwise be paid to the city on the full purchase price of the equipment by applying the tax rate set forth in Section 3-2-5, "Rate of Tax," B.R.C. 1981.

(12) In order to invoke the provisions of paragraph (10) of this subsection, the taxpayer shall comply with the following procedure:

(A) Prior to or on the date on which the construction equipment is located within the boundaries of the city, the taxpayer shall file with the city manager an equipment declaration on a form provided by the city. Such declaration shall state the dates on which the taxpayer anticipates the construction equipment will be located within and removed from the boundaries of the city, shall include a description of each such piece of equipment, shall state the actual or anticipated purchase price of each such piece of equipment, shall state the actual amount of sales or use taxes paid to other municipalities and shall include such other information as reasonably deemed necessary by the city.

(B) The taxpayer shall file with the city an amended construction equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety days after the equipment is brought into the city or, for equipment that is brought into the city for a project of less than ninety days' duration, no later than ten days after substantial completion of the project.

(C) The taxpayer need not report on any equipment declaration any construction equipment for which the purchase price was under \$2,500.00.

(13) If the equipment declaration is given as provided in paragraph (12) of this subsection, then as to any item of construction equipment for which the purchase price was under \$2,500.00 that was brought into the boundaries of the city for thirty days or less for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as the rate set forth in Section 3-2-5, "Rate of Tax," B.R.C. 1981, and that such local sales or use tax was previously paid. In such case the burden of proof shall be on the city to prove such local sales or use tax was not paid.

(14) If the taxpayer fails to comply substantially with the provisions of paragraph (12) of this subsection, the taxpayer may not invoke the provisions of paragraph (10) of this subsection and all construction equipment shall be subject to the provisions of paragraph (9) of this subsection.

(b) Vendors engaged in business in the city shall collect and purchasers shall pay the taxes levied by this chapter, notwithstanding the fact that either vendor or purchaser disputes the tax liability or claims an exemption. If the vendor or purchaser disputes the application of this chapter to any transaction, the vendor shall collect and the purchaser shall pay the tax, and the purchaser may thereafter apply to the city manager for a refund of such taxes paid, as provided in Section 3-2-23, "Refunds (Applies to Entire Title)," B.R.C. 1981.

(c) Any purchaser or consumer accused of failing to pay a tax due under this chapter shall be found not guilty of that offense if it is demonstrated by a preponderance of the evidence that such purchaser or consumer paid the tax to a vendor who such purchaser or consumer reasonably believed would remit the tax to the city.

(d) Vendors shall remit to the city taxes collected according to their net taxable sales, whether or not each sales transaction consists of some items each of which has a retail sale price of less than the minimum taxable sale; but vendors may exclude from net taxable sales the amount of each individual sales transaction that is less than the minimum taxable sale.

(e) Every vendor required or permitted to collect the tax imposed by this chapter shall collect it upon the purchase price of tangible personal property purchased or leased outside the city and intended to be brought into the city for use, storage, or consumption, notwithstanding the following circumstances:

(1) That the purchaser's order or the contract of sale is delivered, mailed, or otherwise transmitted by the purchaser to the vendor at a point outside of the city as a result of solicitation by the vendor through the medium of a catalogue or other written advertisement, by radio or television advertising, or by any other means;

(2) That the purchaser's order or contract of sale was made or closed by acceptance or approval outside of the city or before the tangible personal property enters the city;

(3) That the purchaser's order or contract of sale provides that the property shall be, or it is in fact, procured or manufactured at a point outside the city and shipped directly to the purchaser from a point of origin; or

(4) That the property is mailed to the purchaser in the city from a point outside the city or delivered to a carrier at a point outside the city, F.O.B., or otherwise, and directed to the purchaser in the city, regardless of whether the cost of transportation is paid by the vendor or by the purchaser.

<sup>1</sup>See Colorado Department of Revenue Sales and Use Tax-Special Regulations, 1 CCR 201-5, "Automotive Dealers and Demonstration Vehicles."

Ordinance Nos. 4873 (1984); 4962 (1986); 5187 (1989).

### 3-2-3 Taxes Collected are Held in Trust.

All sums of money paid by a purchaser to a vendor or retailer as required by this chapter are public monies that are the property of the city. The vendor or retailer shall hold such monies in trust for the sole use and benefit of the city until the vendor or retailer pays them to the city manager.<sup>1</sup>

<sup>1</sup>B.K. Sweeny Elec. Co. v. Poston, 110 Colo. 139, 132 P.2d 443 (1943).

### 3-2-4 Vendor Liable for Tax.

(a) Except as otherwise provided by Section 3-2-14, "Methods of Paying Sales and Use Tax," B.R.C. 1981, every vendor shall pay the tax rate set forth in Section 3-2-5, "Rate of Tax," B.R.C. 1981, on all taxable sales. On or before the twentieth day of each month, each vendor shall file a return to the city manager for the preceding calendar month and remit an amount equal to the percentage specified in Section 3-2-5, "Rate of Tax," B.R.C. 1981, of such sales and any excess tax collected over the specified percentage of such sales to the city manager.

(b) The vendor shall add the tax as a separate and distinct item in the sale, except that any retailer selling malt, vinous, or spirituous liquors by the drink may include in the sales price the tax imposed by this chapter. The tax shall be a debt from the purchaser to the vendor recoverable at law in the same manner as other debts. The vendor may not absorb the tax or advertise or state that the tax will be absorbed or will not be imposed. Nor may the vendor refund any part of the tax, except when the full sales price is refunded or a discount is made as provided in Section 3-2-10, "Deductions," B.R.C. 1981.

139-26-105, C.R.S.

Ordinance Nos. 4879 (1984); 5015 (1986); 5599 (1993).

### 3-2-5 Rate of Tax.

(a) Except as specified in subsection (b) of this section, the amount of the tax hereby levied is 3.41 percent of the purchase price of tangible personal property or taxable services sold or purchased at retail.

(b) The amount of the tax hereby levied on food sold in or by a food service establishment shall be the amount levied in

subsection (a) of this section plus 0.15 percent of the purchase price of such food. Cover charges, admission or entrance fees, and mandatory service or service-related charges shall be included as part of the purchase price of such food. However, a mandatory service or service-related charge shall not be included as part of the purchase price of such food, if the full amount of the charge is passed on to the employees of the food service establishment who have provided direct service to each person paying the charge, and if all federal and state income and other applicable taxes due on such charge have been withheld by the food service establishment and paid to the appropriate government.

(c) Of said amount, 0.15 percent shall be deemed a public safety tax, which tax shall expire at midnight on December 31, 2004, 0.25 percent shall be deemed a parks and recreation tax, which tax shall expire at midnight on December 31, 2015, 0.38 percent shall be deemed a library bond (with the residual to the general fund) tax, which tax shall expire at midnight on December 31, 2011, 0.33 percent shall be deemed an open space tax, which tax shall expire at midnight on December 31, 2018, 0.15 percent shall be deemed a general sales and use tax, which tax shall expire at midnight on December 31, 2012, 0.15 percent shall be deemed an open space tax, which tax shall expire at midnight on December 31, 2019, and, beginning on January 1, 2005, 0.15 percent shall be deemed a general sales and use tax, which tax shall expire at midnight on December 31, 2024. As each tax expires, the aggregate tax shall be reduced accordingly.

Ordinance Nos. 5015 (1986); 5047 (1987); 5222 (1989); 5492 (1992); 5780 (1996); 5794 (1996); 5882 (1997); 5958 (1997); 7248 (2002); 7323 (2003).

### 3-2-6 Exempt Property and Services.

Purchase, sale, or use of the following property and services is exempt from taxation under this chapter:

(a) Services, not otherwise taxable under this chapter, whose price is separately stated from the price of tangible personal property with which the services are sold;

(b) Services, not otherwise taxable under this chapter, whose price is not separately stated from the price of tangible personal property with which the services are sold, but that is calculated as a percentage of the total sales price of the property, and approved as exempt by the city manager upon written request.

(c) Tangible personal property sold at wholesale that is actually transformed by the process of manufacture and becomes through the manufacturing process a necessary and recognizable ingredient and component of the finished product, and whose presence in the finished product is essential to the use thereof in the hands of the ultimate consumer;

(d) Exempt commercial packing materials<sup>1</sup>;

(e) Any wheeled vehicle exceeding either eight feet in width or thirty-two feet in length excluding towing gear and bumpers, without power to move, that is designed and commonly used for residential human occupancy in either temporary or permanent locations and that may be drawn over the public highways by a motor vehicle, after such vehicle has once been subject to the payment of sales or use tax under this chapter;

(f) Wholesale sales of taxable property to a licensed retailer, jobber, dealer, or other wholesaler for purposes of taxable resale, and not for the retailer's, jobber's, dealer's, or wholesaler's own consumption, use, storage, or distribution;

(g) Tangible personal property that is to be used, stored, or consumed outside the state of Colorado by persons residing or doing business outside the state of Colorado when the property is to be delivered to the purchaser outside the state by mail; by common, contract, or commercial carrier that is employed to effect delivery by the vendor; or by the vendor's conveyance;

(h) Gasoline or motor fuel upon which has accrued or has been paid the tax prescribed by the Colorado Gasoline and Special Fuel Tax Law<sup>2</sup>;

(i)Cigarettes;

(j)Medical supplies;

(k)Public accommodations, as defined in Section 3-1-1, "Definitions," B.R.C. 1981;

(l)Admission to places or events as defined in Section 3-1-1, "Definitions," B.R.C. 1981;

(m)Neat cattle, sheep, lambs, swine, and goats; and mares and stallions for breeding;

(n)Newspapers and newsprint and printer's ink used to produce newspapers, but not preprinted newspaper supplements;

(o)Sales of tangible personal property and taxable services that are to be used, stored, or consumed outside the city to persons who are not residents of the city and who do not engage in business in the city if the property or services purchased or sold are to be delivered to the purchaser outside the city by mail; by common, contract, or commercial carrier that is employed by the vendor to effect delivery; or by the vendor's conveyance;

(p)Motion picture prints when the exhibitor thereof charges admissions for exhibition and pays the admission tax imposed by Chapter 3-4, "Admissions Tax," B.R.C. 1981;

(q)Tangible personal property owned by a resident but purchased when the purchaser was not a resident of the city and used for a substantial period of time outside of the city. When such property is an automotive vehicle, it may qualify as exempt property only if it was registered outside the city for a substantial period of time;

(r)Amounts paid by any purchaser as, or in the nature of, interest or finance charges on account of credit extended in connection with the sale or purchase of any tangible personal property if the interest is separately stated from the consideration received for the property;

(s)Tangible personal property brought into the city by a non-resident for temporary personal use;

(t)Automobile dealers' demonstration vehicles, subject to the conditions in paragraph 3-2-2(a)(4), B.R.C. 1981.

(u)All property and services whose sale, purchase, or use the city is prohibited from taxation by the laws or Constitution of the United States or the Constitution of the state of Colorado;

(v)All sales of food purchased with food stamps on or after October 1, 1987;

(w)Building materials for installation, use, or consumption on buildings which have been designated as landmarks and for which a landmark alteration certificate is required under Chapter 10-13, "Historic Preservation," of Title 10, "Structures," B.R.C. 1981, if, at the time of application for building permit, the applicant submits proof that the building has been so designated and accompanying affidavits of the owner and the contractor performing the construction on the building stating that the building materials will be installed, used, or consumed exclusively upon the building for which the permit has been issued and that at least thirty percent of the dollar value of the building permit shall be for exterior improvements. No person shall fail to comply with such an affidavit. No more than \$25,000.00 of tax per year and no more than \$12,500.00 of tax per site per year shall be exempted under this subsection; or

(x)Occasional food sales, as defined in Section 3-1-1, "Definitions," B.R.C. 1981.

1369 (1974). See also Colorado Department of Revenue Sales and Use Tax, ICCR 201-4, Regulation 26-102.20.

239-27-111, C.R.S.

Ordinance Nos. 5030 (1987), 5092 (1988); 5272 (1990); 5315 (1990); 5430 (1991).

### 3-2-7 Exempt Persons.

The following persons are exempt from payment of the tax imposed by this chapter on all purchases unless otherwise specified but not the duty to collect and remit the tax levied hereby on sales:

(a) The United States government and all departments and institutions thereof, the state of Colorado and the departments, institutions, and political subdivisions thereof, and the city, but only in the exercise of their governmental functions and only when purchases are supported by official government purchase orders and paid for by draft or warrant drawn on the government's account directly to the seller. But purchases or sales of tangible personal property or taxable services for the use in construction projects, as defined in Section 3-1-1, "Definitions," B.R.C. 1981, provided under a construction contract to the government entity by an independent contractor are taxable<sup>1</sup>.

(b) Charitable organizations, if:

(1) The purchase is of property or services to be used in the conduct of the organization's regular activities to foster its religious or charitable purpose<sup>2</sup>;

(2) The purchase is paid for directly by the organization without reimbursement therefor, and the purchase generates for the organization no "unrelated business taxable income" as defined in Section 512 of the United States Internal Revenue Code;

(3) The organization obtains from the city manager an exempt institution license under Section 3-2-12, "Exempt Institution License," B.R.C. 1981, and presents the license to the vendor at the time of the purchase or sale; and

(4) The property or service purchased or sold is not for use in construction projects, as defined in Section 3-1-1, "Definitions," B.R.C. 1981, when provided under construction contract to the charitable organization by an independent contractor.

(c) Building contractors purchasing construction materials to be used for installation, use, or consumption on job sites or building construction addresses on which a city building permit has been issued, if:

(1) The value of the construction materials was included in determining the valuation of the construction for purposes of obtaining the building permit;

(2) The vendor records on the invoice of sale the job site address and building permit number; and

(3) The contractor has prepaid the tax directly to the city on the estimated or actual basis, calculated as a percentage of the construction valuation at the time the building permit is issued.

(d) Non-residents of the city who bring tangible personal property into the city for personal use, storage, or consumption while they are temporarily within the city.

1Temple v. Arthur Veneri Co., 470 P.2d 576 (1970).

2Security Life & Acc. Co. v. Heckers, 495 P.2d 225 (1972).

Ordinance Nos. 5430 (1991); 6090 (1999); 7162 (2001).

### 3-2-8 Exemption Burden of Proof.

The burden of proving that any vendor, retailer, consumer, or purchaser is exempt from collecting or paying the tax upon any property or services sold or purchased, paying tax to the city manager, or making returns to the city manager is on the person asserting the claim of exemption.<sup>1</sup>

1First Lutheran Mission of the Knolls v. Department of Revenue, 613 P.2d 351 (Colo. App. 1980).

### 3-2-9 Tax Limited when Other Taxes Paid.

The tax imposed under this chapter shall be reduced by the amounts of taxes paid to the city, other cities, or other states as follows:

- (a) When a sales tax has been paid to the city under this chapter, no use tax is due upon the use, storage, or consumption of tangible personal property, but a sales or use tax is due upon the rental or leasing of such property.
- (b) The city's use tax shall not apply to tangible personal property that was previously subjected to a sales or use tax of another municipality, organized and existing under the authority of the Constitution or laws of the State of Colorado, lawfully imposed on the purchaser or user, equal to or in excess of the rate set forth in Section 3-2-5, "Rate of Tax," B.R.C. 1981. A credit shall be granted against the city's use tax equal to the tax paid by reason of the imposition of a sales or use tax of the other municipality on the purchase or use of the property. The amount of the credit shall not exceed the rate set forth in Section 3-2-5, "Rate of Tax," B.R.C. 1981. The use tax credit set forth in this subsection shall not apply to a sales tax paid on construction materials.
- (c) The city's sales tax shall not apply to the sale of construction materials, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit evidencing that a local use tax has been paid or is required to be paid.
- (d) The city's use tax shall not apply to construction materials that are stored inside the city but are not used for any other purpose within the city.

Ordinance Nos. 4873 (1984); 4962 (1986); 5001 (1986); 7011 (1999).

### 3-2-10 Deductions.

The following amounts may be deducted from a taxpayer's gross sales:

- (a) Exempt property and services set forth in Section 3-2-6, "Exempt Property and Services," B.R.C. 1981;
- (b) Gross sales that are represented by accounts not secured by a conditional sale contract or chattel mortgage, found to be worthless and actually and properly charged as bad debts for Colorado State income tax purposes; except that if any such accounts are thereafter collected by the taxpayer, the taxpayer shall pay the tax upon the amount so collected and



the three year limitation of Section 3-2-38, "Limitations," B.R.C. 1981, applies from the date on which the tax was payable without consideration for the write-off rather than from the date when the vendor actually writes off the debt;

(c) The sales price of property returned by the purchaser when the full sale price including the tax levied is refunded in cash or by credit;

(d) The amount of discount from the original sales price if the discount and corresponding decrease in sales tax due is actually passed on to the purchaser; but any allowed rebate, credit, or cash discount allowed for payment on or before a given date may only be deducted on the taxpayer's return that follows the customer's actual receipt of the discount. If the price upon which the tax was computed and paid to the city by the vendor is subsequently readjusted before the purchaser pays the vendor the tax, the taxpayer may request the city manager to approve a credit of such additional tax paid against the tax due on the next return the taxpayer files with the city;

(e) The amount of the fair market value of any exchanged or traded property that is to be resold thereafter in the usual course of the retailer's business, if included in the full price of an article sold; and

(f) The amount of each individual sales transaction that is less than the minimum taxable sale.

Ordinance No. 7248 (2002).

### 3-2-11 Sales and Use Tax License.

(a) No person shall engage in the business of selling at retail tangible personal property or taxable services without first having obtained a sales and use tax license from the city manager.

(b) Each license shall be numbered, show the name, residence, place, and character of business of the licensee, and be conspicuously posted in the place of business for which it is issued. No sales and use tax license is transferable.

(c) No person engaged in business in the city who regularly purchases or leases tangible personal property or taxable services for use, storage, or consumption in connection with said business, from sources within or without the city, shall use, store, or consume such property or services without first having obtained a sales and use tax license.

(d) The city manager shall issue a sales and use tax license to persons who pay the license fee prescribed by Section 4-20-38, "Tax License Fees," B.R.C. 1981, and complete an application therefor, stating the name and address of the person and the business and such other information as the city manager may require. The manager shall not issue a sales and use tax license until the manager has verified that the location of the business complies with the provisions of Title 9, "Land Use Regulation," B.R.C. 1981.

(e) The license is valid so long as the business remains in continuous operation or the license is canceled by the licensee or revoked by the city.

(f) If business is transacted at two or more separate locations by one person, each location shall be separately licensed.

(g) Whenever a business entity that is required to be licensed under this chapter is sold, purchased, or transferred, so that the ownership interest of the purchaser or seller changes in any respect, the purchaser shall obtain a new license for the business.

Ordinance Nos. 4803 (1984); 5599 (1993); 7162 (2001).

### 3-2-12 Exempt Institution License.

(a) No exempt institution shall purchase tax free in the city or use in the city tangible personal property or taxable services without payment of the tax imposed by this chapter unless the institution first obtains an exempt institution license from the city manager and presents its license or, if a government entity, its license number, to the vendor of tangible personal property or taxable services before making a purchase, lease, or use of the property or services.

(b) The application for an exempt institution license shall include the organization's certificate of incorporation and a copy of the institution's federal tax exemption letter, by-laws, and financial statements showing source of funds and expenditures.

(c) As a condition of obtaining an exempt institution license, the institution shall agree to make regular and complete reports of all purchases, both those that are not taxable and those that are taxable, including, without limitation, purchases of property and services resold to members and others and those used for other than the exempt purpose of the institution.

### 3-2-13 Revocation of License.

After notice and an opportunity for a hearing under Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, the city manager may revoke the license of any person whom the manager finds to have violated any provision of this title.

### 3-2-14 Methods of Paying Sales and Use Tax.

(a) Every contractor who builds, reconstructs, alters, or improves any building or other structure, including work performed for federal, state, or city governments or exempt institutions in the city, and every person engaged in the installation of poles, lines, cables, or other transmission or distribution facilities of public utilities, and who purchases tangible personal property or taxable services for use therein and every owner or lessee of realty or improvements to realty in the city who attaches tangible personal property to or causes to be performed taxable services upon said realty or improvements thereto shall pay the tax imposed by this chapter upon such tangible personal property or taxable services in one of the following ways:

(1) Payment to a vendor licensed by the city of tangible personal property or taxable services at the time and place of purchase thereof;

(2) Payment by either the owner, lessee, or general contractor or separately by a subcontractor electing to do so at the time a building or right of way permit is issued, on the estimated percentage basis, based on a percentage of the total valuation of the construction contract; or

(3) Filing a use tax return on a monthly or other basis approved by the city manager under Subsection 3-2-15(d), B.R.C. 1981, and payment of the tax by the 20th day of each reporting period for the previous reporting period after obtaining a sales and use tax license.

(b) Every person who engages in business in the city and who purchases, leases, or rents tangible personal property or taxable services for use, storage, or consumption in the city in connection with the business from sources within or without the city and taxable under this chapter and who has not paid the sales tax imposed by this chapter to a vendor required to collect the tax shall pay the city use tax, after obtaining a sales and use tax license, by filing a return on a monthly or other basis approved by the city manager under Subsection 3-2-15(d), B.R.C. 1981, and remitting the tax by the twentieth day of each reporting period for the previous reporting period.

(c) Every resident of the city who purchases or leases any taxable property or taxable services for use, storage, or consumption in the city from sources within or without the city and who has not paid a sales tax under this chapter to a vendor required to collect it shall file a use tax return and pay the tax within thirty days from the purchase or lease of the taxable property or taxable services.

(d) Non-resident vendors engaged in business in the city shall collect and remit the sales or use tax as prescribed in this chapter, but the non-resident vendor may petition the city manager to allow filing returns and paying use taxes on a regularly audited and reasonable estimated payment basis on the grounds that the payment of the tax on individual sales will impose an undue hardship and that the type, occasion, and infrequency of sales warrants such exception. Estimated payments of the tax shall be based upon the proportion that the vendor's gross sales taxable under this chapter bear to the vendor's total gross sales.

Ordinance No. 4873 (1984).

### 3-2-15 Tax Returns.

(a) The city shall use and the taxpayer shall file its return upon the standard municipal sales and use tax reporting form and any subsequent revisions thereto adopted by the executive director of the State Department of Revenue by the first full month commencing one hundred twenty days after the effective date of the regulation adopting or revising such standard form.

(b) A vendor doing business in two or more locations, whether inside or outside the city, may file one return covering all such locations, but the vendor shall file a supplemental report showing gross sales and net taxable sales and taxes collected thereon for each such location.

(c) Taxpayers are required to file returns and pay sales and use taxes due according to the following schedule:

#### Average Sales and Use Tax Liability per Month

#### Remittance Schedule

Up to \$15.00

Annually

\$15.01 to \$300.00

Quarterly

Over \$300.00

### Monthly

(d) Upon request of a taxpayer whose regularly employed accounting methods are such that monthly returns may result in undue hardship, the city manager may accept returns at more convenient intervals or in installments that will nevertheless not jeopardize collection of the tax.

(e) The city manager may require a bond or other financial guarantee to secure payment of the tax on less frequent than monthly basis, as authorized in subsection (d) of this section, and may revoke permission to pay the tax on such basis if the tax due becomes delinquent.

Ordinance Nos. 4962 (1986); 7248 (2002).

### 3-2-16 City Council Empowered to Amend, Repeal, and/or Revise Law.

The city council is authorized to reduce the retail sales and use tax imposed by this chapter and amend or repeal this chapter.

### 3-2-17 Duties and Powers of City Manager.

(a) The city manager is authorized to administer the provisions of this title, issue licenses, adopt legislative and interpretive rules to implement this title, prescribe forms and provide a uniform method of adding the tax or its average equivalent to the purchase price, and permit taxpayers to pay tax on an estimated percentage basis or at less than monthly intervals.

(b) The city manager may, upon the request of a taxpayer or potential taxpayer, issue a written opinion on the applicability of this title and any provisions thereof to such taxpayer. The request shall be written and under oath shall include all information required by the manager. The manager's opinion shall be limited to the statement of facts as submitted and applicable ordinances in effect on the date of the opinion.

(c) The city manager may appoint such auditors, accountants, experts, and other persons as are necessary to carry out the manager's responsibilities under this title. The manager may delegate to such persons authority granted to the manager as necessary for administration of the title and shall bond any person handling money under this title.

(d) The city manager shall waive sales and use taxes otherwise payable under this chapter on construction projects for the rehabilitation of housing for low income persons whose income does not exceed thirty-five percent of the median income for Boulder County.

(e) The city manager or an agent thereof may compromise any civil or criminal dispute under this title to the extent of \$500.00 before referring it to the office of the city attorney for prosecution. The city attorney or a delegate thereof shall compromise any criminal or civil case arising under this title, upon the manager's written request. Whenever a compromise of \$500.00 or less is made by the manager or an agent thereof, the manager shall file a written opinion explaining the reasons therefor, which may include financial inability of the taxpayer to pay a larger amount, and a statement of:

(1) The amount of tax assessed;

(2) The amount of interest, penalties, and additional amounts imposed by this chapter on the taxpayer; and

(3) The amount paid under the terms of the compromise.

(f) The city manager shall make available to any requesting vendor a map showing the boundaries of the city. The

requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a sales or use tax or both. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available to it.

Ordinance No. 4962 (1986).

### 3-2-18 Taxpayer Duty to Keep Records and Make Reports.

(a) The city manager may require any person, by regulation or notice served on such person, to make such return, render such statement, keep and furnish such records, or make such information reports as the manager may deem sufficient to demonstrate whether or not such person is liable for payment or collection of the tax imposed by this title.

(b) Contractors who have prepaid an estimate of taxes on construction projects under paragraph 3-2-14(a)(2), B.R.C. 1981, shall, upon completion of each such project, report the actual costs of tangible personal property and taxable services used therein.

(c) Every taxpayer or other person liable to the city for sales or use tax under this title shall keep and preserve for a period of three years such books, accounts, and records, including, without limitation, original sales and purchase records, as may be necessary to determine the amount of tax that the taxpayer is liable to pay or collect.<sup>1</sup>

(d) All such books, accounts, and records shall be open for examination at any time by the city manager or a duly authorized agent thereof. If the taxpayer or person does not keep the necessary books, accounts, and records within the city, such taxpayer or person may comply with this subsection by producing books, accounts, or records or such information as the manager reasonably requires for examination within the city or at the place where such books, accounts, and records are regularly kept.

(e) If a taxpayer refuses to furnish any of the foregoing books, accounts, records, or information upon request of the city manager or an agent thereof, the manager may apply to any judge of the District Court of the State of Colorado for a subpoena to require the taxpayer to appear before the manager, produce any of the foregoing information in the taxpayer's possession, and testify under oath before the manager.

(f) If the city manager is unable to secure from the taxpayer information relating to the correctness of the taxpayer's return or the amount of the taxpayer's taxable sales, the manager may apply to any judge of the District Court in and for Boulder County for subpoenas to such other persons as the manager believes may have knowledge of the taxpayer's return or income. If the manager shows that the taxpayer cannot be found, evades service of subpoena, fails or refuses to produce records or give testimony, or is unable to furnish such records or testimony, the judge may cause subpoenas to issue to the persons sought, requiring them to appear before the manager and give testimony regarding the taxpayer's return or income. If any of the persons so served with subpoenas fail to respond thereto, the judge may proceed against such persons as in cases of contempt.

<sup>1</sup>See Colorado Department of Revenue Sales Tax and Use Tax, ICCR 201-4, Regulation 26-116.

### 3-2-19 Coordinated Audit.

(a) Any taxpayer licensed in the city pursuant to Section 3-2-11, "Sales and Use Tax License," B.R.C. 1981, and holding a similar sales tax license in at least four other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided in this section.

(b) Within fourteen days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the city manager, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a

waiver of any passage-of-time based limitation upon the city's right to recover tax owed by the vendor for the audit period.

(c) Except as provided in subsection (g) of this section, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of any passage-of-time based limitation upon the city's right to recover taxes owed for the proposed audit period may be audited by the city during the twelve months after such request is submitted only through a coordinated audit involving all of the listed Colorado municipalities electing to participate in such an audit.

(d) If the city desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to subsection (b) of this section, the city manager will so notify the city manager or other appropriate official of the municipality whose notice of audit prompted the taxpayer's request within ten days after receipt of the taxpayer's request for a coordinated audit. The city manager will then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(e) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the city, the city manager will facilitate arrangements between the city and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The city manager will cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

(f) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the city, the city manager will, once arrangements for the coordinated audit between the city and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited, the records most likely to be required by participating municipalities for completion of the coordinated audit, and the proposed schedule for the coordinated audit.

(g) The coordinated audit procedure set forth in this section shall not apply:

(1) When the proposed audit is a jeopardy audit;

(2) To audits for which a notice of audit was given prior to the effective date of this section;

(3) When a taxpayer refuses to promptly sign a waiver of any ordinance that could limit, based upon passage of time, the city's right to recover for a portion of the audit period; or

(4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in subsection (b) of this section.

Ordinance No. 5430 (1991).

### 3-2-20 Preservation of Tax Returns and Reports.

(a) All reports and returns required under this title and received by the city shall be preserved for three years and thereafter until the city manager orders them to be destroyed.

(b) Except in accordance with judicial order or as otherwise provided by law, the city manager and agents, clerks, and employees thereof shall not divulge or make known in any way any information disclosed in any document, report, or return filed under this title except such information as is displayed on the tax license. The officials charged with the

custody of documents, reports, and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the manager in an action or proceeding under the provisions of this title when the report or a fact shown thereby is directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit into evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding, and no more.<sup>1</sup>

(c) Nothing in this section shall be construed to prohibit the delivery to a person or a duly authorized representative thereof of a copy of any return or report filed in connection with such person's tax. Copies of such records may be certified by the city manager or an agent thereof and when so certified shall be evidence equally with the originals and may be received as evidence of their contents.

(d) Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the inspection of returns by the city attorney or other legal representatives of the city.

(e) Notwithstanding the provisions of this section, the city manager may furnish to the taxing officials of the State of Colorado, its political subdivisions, any other state, or political subdivision, or the United States, any information contained in tax returns and related documents filed pursuant to this chapter or in the report of an audit or investigation made with respect to a return, if the recipient jurisdiction agrees with the manager to grant similar privileges to the city and if such information is to be used by the jurisdiction only for tax purposes.

(f) Notwithstanding the provisions of this section, the city manager may disclose:

(1) names, addresses, and telephone numbers of the officers and owners of a sales, use, accommodations admissions or admissions tax licensee as that information has been provided to the city by the licensee;

(2) information to an individual with whom, or an organization with which, the manager has contracted to assist the city in examining or auditing tax records or collecting taxes, provided that the individual or organization is required by contract not to disclose any of that information to any person other than the city manager and the authorized agents, clerks and employees thereof; and

(3) information to an individual with whom, or an organization with which, the manager has contracted to assist the city in evaluating economic trends or revenue projections within the city, provided that the individual or organization is required by contract not to disclose any of that information to any person other than the city manager and the authorized agents, clerks and employees thereof.

(g) If a city employee or officer violates the provisions of this section, such employee or officer may be dismissed from office and may also be prosecuted for a violation of this section.

(h) No individual with whom, or organization with which, the manager has contracted pursuant to this section shall fail to comply with the confidentiality provisions of this section. Any such failure may be prosecuted for a violation of this section, and may constitute a basis upon which to terminate the individual's or organization's contract with the city.

<sup>1</sup>See *Losavio v. Robb*, 579 P.2d 1152 (1978).

Ordinance Nos. 5882 (1997); 7330 (2003).

### 3-2-21 Restrictions on Employment by City Employees.

No deputy, agent, clerk, or other officer or employee of the city engaged in any activity governed by this title shall engage in the business or profession of tax accounting or accept employment with or without compensation from any person

holding a sales and use tax license from the city for the purpose, directly or indirectly, of preparing tax returns or reports required by the city, the State of Colorado, its political subdivisions, any other state, or the United States or accept any employment for the purpose of advising, preparing materials or data, or auditing books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the city, the State of Colorado, its political subdivisions, any other state, its political subdivisions, or the United States.

### 3-2-22 Penalties for Failure to File Tax Return or Pay Tax (Applies to Entire Title).

(a) If any person fails, neglects, or refuses to collect tax or to file a return and pay the tax required by this title or fails to remit the correct amount of tax; or underpays the tax on a regular basis; or underpays the tax because of negligence or fraud, the city manager shall make an estimate of the tax due, based on available information, and shall add thereto penalties, interest, and any additions to the tax. The manager shall serve upon the delinquent taxpayer personally or by first class mail directed to the last address of the taxpayer on file with the city, written notice of such estimated taxes, penalties, and interest, constituting a Notice of Final Determination, Assessment, and Demand for Payment due and payable within twenty calendar days after the date of the notice. The taxpayer may request a hearing on the assessment as provided in Section 3-2-25, "Hearings (Applies to Entire Title)," B.R.C. 1981.

(b) The penalties assessed for failure to file returns or pay taxes as required by this title shall be:

(1) If a person neglects or fails to file a return or pay the tax on any return required under this title on the date prescribed therefor, determined including any extension of time for filing, such taxpayer is liable to pay a penalty of ten percent plus interest on such delinquent taxes at the rate imposed by subsection (j) of this section, plus one-half of one percent per month from the date when the return or payment was due until paid. In the case of non-filing or non-payment of the sales tax, the one-half percent per month penalty shall not exceed eighteen percent in the aggregate. The city manager shall assess the penalties by serving upon the taxpayer a Notice of Final Determination, Assessment, and Demand for Payment, as provided in subsection (a) of this section.

(2) In addition to any other penalties provided by this section, interest at twice the rate provided in subsection (j) of this section, shall be imposed on any use tax, finally determined to be due and unpaid under any provision of Section 3-2-25, "Hearings (Applies to Entire Title)," B.R.C. 1981, from the date due until paid.

(c) If a taxpayer fails to file a return or pay the tax on any return required under this title on the date prescribed therefor, determined with regard to any extension of time for filing, due to fraud with the intent to evade the tax, is liable to pay a penalty of one hundred percent of the deficiency plus interest collected at a rate of three percent per month on the amount of the deficiency from the date the return was due until paid. The city manager shall assess the penalties by serving upon the taxpayer a Notice of Final Determination, Assessment, and Demand for Payment, as provided in subsection (a) of this section.

(d) If the amount of tax is understated on the taxpayer's return because of a mathematical error on the face of the return, the city manager shall notify the taxpayer by Notice of Final Determination, Assessment, and Demand for Payment of the amount of tax liability exceeding that shown in the return. The taxpayer has no right of appeal from this assessment but shall pay the tax due and assessed or file an amended return to show the correct amount of tax due within ten days from the date of the notice.

(e) If any amount of tax is not paid on or before the twentieth day following the end of the prescribed reporting period, interest on such amount at the rate imposed under subsection (j) of this section shall be paid for the period from such date until paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment.

(f) If any person liable to pay tax imposed by this title has repeatedly failed, neglected, or refused to pay the tax within the time specified for such payment and the city manager has been required to exercise enforcement proceedings through issuing a distraint warrant to enforce collection of taxes due, the manager may add to the amount of taxes due, together with all penalties and interest thereon otherwise provided in this title, the following penalties for recurring distraint warrants:



(1) For the second through fifth distraint warrants issued, the greater of fifteen percent of the delinquent taxes, interest, and penalties due or the sum of \$25.00; and

(2) For six or more distraint warrants issued, the greater of thirty percent of the delinquent taxes, interest, and penalties due or the sum of \$50.00.<sup>1</sup>

(g) For good cause shown the city manager may waive any penalty assessed or interest imposed under this title.

(h) Interest prescribed under this title shall be paid upon notice and demand, shall be assessed, collected, and paid in the same manner as the tax to which it applies, and may be assessed and collected at any time during the period within which the tax to which the interest relates may be assessed and collected.

(i) If any portion of a tax is satisfied by credit of an overpayment, no interest shall be imposed under this title on the portion of the tax so satisfied for any period during which, if the credit had been allowed, interest would have been allowed to the taxpayer upon the overpayment.

(j) When interest is required or permitted to be charged under any provisions of subsections (b) through (e) of this section, the rate of interest shall be one percent a month.

(k) The penalties provided in this section are not exclusive.

139-21-114(7), C.R.S.

Ordinance Nos. 4962 (1986); 5039 (1987); 5430 (1991); 7011 (1999); 7162 (2001); 7248 (2002).

3-2-23 Refunds (Applies to Entire Title).

(a) The right of any person to a refund under this title is not assignable. An application for refund shall be completed by the purchaser or vendor who paid the tax, as shown in the invoice of sale.

(b) If a dispute arises between the purchaser and vendor as to whether or not a sale or purchase is exempt from taxation under this title, the vendor shall collect and the purchaser shall pay the tax and the vendor shall issue to the purchaser a sales receipt or paid invoice.

(c) Limitations on refund claims shall be as follows:

(1) An application for refund of sales or use tax paid under protest by a taxpayer which claims an exemption pursuant to Sections 3-2-6, "Exempt Property and Services," or 3-2-7, "Exempt Persons," B.R.C. 1981, shall be made within sixty days after the purchase, storage, use, or consumption of the tangible personal property or taxable services whereon an exemption is claimed.

(2) An application for refund of tax monies paid in error or by mistake shall be made within three years after the date of purchase, storage, use, or consumption of the tangible personal property for which the refund is claimed. For bad debt write-offs, the three-year limitation of Section 3-2-38, "Limitations," B.R.C. 1981, applies from the date on which the tax was payable without consideration for the write-off rather than from the date when the vendor actually writes off the debt.

(3) Applications for refunds shall be made upon forms prescribed and furnished by the city manager, and the taxpayer shall support the claim for refund by the original paid invoice or sales receipt issued by the vendor and by the taxpayer's own affidavit establishing grounds for the exception and provide such other information as the manager may require.

(d) The city manager shall with due speed determine whether to grant the refund and shall notify the applicant in writing of that determination. Aggrieved applicants may appeal the initial decision by requesting a hearing from the manager thereon within twenty calendar days of the date of the decision, as provided in Section 3-2-25, "Hearings (Applies to Entire Title)," B.R.C. 1981, and may appeal an adverse decision of the manager, as provided in Section 3-2-26, "Appeals from City Manager's Decision (Applies to Entire Title)," B.R.C. 1981.

(e) If the city manager discovers from examination a return within the time periods provided for filing refund request, upon a claim duly filed by the taxpayer, or upon final judgment of a court that tax, penalty, or interest paid by any taxpayer under this chapter exceeds the amount due or has been illegally or erroneously collected, the manager shall refund such improperly collected tax, penalty, or interest, regardless of whether the tax was paid under protest, together with interest provided in Section 3-2-24, "No Interest on Overpayments and Refunds (Applies to Entire Title)," B.R.C. 1981. The manager shall issue a warrant for the payment to the taxpayer out of the reserve of the city general fund provided therefor. The manager shall keep on file a duplicate of such voucher and also a statement that sets forth the reasons that the refund was made.

(f) Whenever it is established that any taxpayer has, for any period under applicable statutes of limitations, overpaid a tax imposed by this title and that the taxpayer also has an unpaid balance of tax and interest accrued on the city manager's records for any other period, the manager shall credit the portion of the overpayment of tax plus interest allowable thereon that does not exceed the amount of such unpaid balance and shall refund the remainder.

(g) No applicant for a refund or other person supporting an application for refund shall make any false statement in connection with such application. The conviction of any person for violating this section is prima facie evidence that all refunds received by such person during the current calendar year were unlawfully obtained. The city manager may bring an action to recover such refunds. All refund application forms shall contain a summary of the penalty provisions provided in this subsection.

Ordinance Nos. 4812 (1984); 4962 (1986); 5430 (1991); 7248 (2002).

#### 3-2-24 No Interest on Overpayments and Refunds (Applies to Entire Title).

(a) No interest shall be allowed and paid upon any overpayment under this title.

(b) Any portion of a tax or any interest, penalty, additional assessment, or addition to the tax that has been erroneously refunded shall bear interest at the rate stated in Subsection 3-2-22(j), B.R.C. 1981, from the date of the payment of the refund to the date of its repayment by the taxpayer.

Ordinance Nos. 4812 (1984); 5430 (1991); 7011 (1999).

#### 3-2-25 Hearings (Applies to Entire Title).

(a) A taxpayer may request a hearing on any proposed tax imposed under this title after receiving a Notice of Final Determination, Assessment, and Demand for Payment or denial of a claim for refund by filing a request for hearing within twenty calendar days of the date of mailing of the notice of final determination or refund denial. The city manager may allow a later filing of a hearing request if the taxpayer shows good cause for a late filing. The request for hearing shall set forth the reasons for and amount of changes in the notice of final determination or refund denial that the taxpayer seeks and such other information as the manager may prescribe.

(b) The city manager shall conduct the hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, except that the manager shall notify the taxpayer in writing of the time and place of the hearing at

least seven calendar days before it is scheduled, unless the taxpayer agrees to a shorter time. The hearing shall be held within sixty days of the date of receipt of the request for a hearing, unless the taxpayer agrees to a later date.

(c) The city manager shall conduct the hearing and may administer oaths and take testimony. The hearing officer on the appeal shall not be the same individual who determined the tax liability.

(d) In lieu of a request for hearing as provided in subsection (a) of this section, a taxpayer may request an extension of up to twenty calendar days for seeking a hearing by filing a written request within twenty calendar days after the date of mailing of the notice of final determination or refund denial or may file a written brief and such other documents and information as the taxpayer wishes within twenty calendar days after the date of mailing of the notice of final determination or refund denial and request the city manager to reconsider the action without a hearing. If the taxpayer requests a reconsideration of the manager's decision, the manager shall consider the request and render a decision, after which the taxpayer may request a hearing thereon as provided in subsection (a) of this section.

(e) The city manager may modify or abate in full the tax, penalty, and interest protested by the taxpayer or grant the requested refund, based on the evidence and argument presented.

(f) The city manager shall send a Determination Notice to the taxpayer setting forth a decision, including any amount found due or amount of claim for refund denied and the grounds for allowing or rejecting the claim in whole or in part. The determination notice is an assessment that is due and payable within thirty days from its date, unless the taxpayer appeals the city manager's decision as provided in Section 3-2-26, "Appeals from City Manager's Decision (Applies to Entire Title)," B.R.C. 1981.

(g) If after twenty calendar days from the date of the mailing of the notice of final determination or refund denial, the tax has not been paid, no request for hearing has been made, no extension has been requested, and no request for reconsideration has been filed by the taxpayer, the Notice of Final Determination, Assessment and Demand for Payment previously mailed constitutes a final assessment of the amount of tax specified, together with interest and penalties or a final denial of refund, except as to any amounts about which the taxpayer has filed a protest with the city manager.

Ordinance Nos. 4962 (1986); 5001 (1986); 5430 (1991); 5985 (1998).

3-2-26 Appeals from City Manager's Decision (Applies to Entire Title).

(a) An aggrieved taxpayer may appeal the city manager's Determination Notice to:

(1) The District Court in and for Boulder County by filing a complaint for judicial review with the court within thirty days of the date of the Determination Notice, under Colorado Rule of Civil Procedure 106(a)(4); or

(2) For sales and use tax, the taxpayer may elect instead to appeal to the executive director of the Colorado Department of Revenue as provided in Section 29-2-106.I, C.R.S., if all the transactions that are the subject matter of the city manager's Determination Notice occurred after January 1, 1986.

(b) Within fifteen days after filing the notice of appeal in cases proceeding under paragraph (a)(1) of this section, the taxpayer shall file with the District Court a bond in twice the amount of the taxes, interest, and other charges prescribed in the Determination Notice that are contested on appeal, or the taxpayer shall deposit the disputed amount with the city manager in lieu of a bond. The taxpayer may satisfy the bond requirement by a savings account or certificate of deposit issued by a state or national bank or by a state or federal savings and loan association in accordance with Section 11-35-101, C.R.S., equal to twice the amount of taxes, interest, and other charges stated in the Notice and Final Determination. If the taxpayer deposits the disputed amount with the manager, no further interest shall accrue on the deficiency contested during the pendency of the action. After final action of the Supreme Court of Colorado in the case or when time for appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the manager and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed by Subsection 3-2-22(j), B.R.C. 1981, on the amount refunded, according to the final order in the case. No claim for refund

of amounts so deposited with the manager need be made by the taxpayer in order for the court to order the manager to repay them as herein provided.

Ordinance Nos. 4962 (1986); 5001 (1986); 5430 (1991).

### 3-2-27 Tax Constitutes Lien.

(a) The sales and use tax imposed by this chapter, together with all penalties and interest pertaining thereto, is a first and prior lien on tangible personal property other than the goods, stock in trade, and business fixtures in which the taxpayer has an ownership interest, subject only to valid mortgages and other liens of record at the time of and prior to the recording of notice of lien provided by subsection (c) of this section. When the tax is collected by a retailer or its agent, the sales and use tax imposed by this chapter together with all penalties and interest pertaining thereto, is a first and prior lien upon the goods, stock in trade, and business fixtures in which the retailer or agent has an ownership interest except for goods that have been purchased in the ordinary course of business by retail customers, and such lien takes priority over other liens or claims of whatsoever kind or nature on the such property.<sup>1</sup> The personal property of an owner who has made a bona fide lease to a retailer shall be exempt from the lien created by this paragraph if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property used. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the city clerk. Motor vehicles which are properly licensed in this state showing the lessor as the owner thereof shall be exempt from the lien created by this paragraph, except that said lien shall apply to the extent that the lessee has equity or a similar interest in the motor vehicle. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this paragraph.<sup>2</sup>

(b) Whenever the business or property of any taxpayer is placed in receivership, docketed in bankruptcy, seized under distraint for nonpayment of property taxes, or an assignment is made for the benefit of creditors, all taxes, penalties, and interest imposed by this title and for which the taxpayer is in any way liable under this title are a prior and preferred claim on the property of the taxpayer, except as to pre-existing liens or claims of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice of lien provided for in subsection (c) of this property of the taxpayer other than the goods, stock in trade, and business fixtures. No sheriff, receiver, assignee, or other officer may sell the property of any taxpayer subject to the provisions of this title pursuant to process or order of any court without first ascertaining from the city manager the amount of any taxes, penalties, or interest due and payable under this title. If there are any such taxes, penalties, or interest due, the sheriff, receiver, assignee, or other officer shall first pay the amount of said taxes, penalties, or interest due out of the proceeds of such sale of the property before paying any monies to judgment creditors or other claimants, except that the officer may pay costs of the proceedings and other pre-existing liens or claims as provided in this subsection.

(c) If any tax, penalty, or interest imposed by this title and shown due by returns filed by the taxpayer or by assessments made by the city manager as provided in this title is not paid within ten days after it is due, the manager may issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalty, and interest, the date of its accrual, and the fact that the city claims a first and prior lien on the real and personal property of the taxpayer, except as to pre-existing liens or claims or a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice on property of the taxpayer other than the goods, stock in trade, and business fixtures in which the taxpayer has ownership interest. The notice of lien shall be made on forms prescribed by the manager and verified by the manager or a duly qualified agent thereof and may be filed in the office of the clerk and recorder of any county in the state in which the taxpayer owns real or personal property or with any person in possession of any personal property or rights to property belonging to the taxpayer.

(d) The city manager shall release any lien as shown on the records of the county clerk and recorder as herein provided, upon payment of all taxes, penalties, and interest covered thereby, in the same manner as mortgages and judgments are released.

<sup>1</sup>ITT Diversified Credit Corp. v. Couch, 669 P.2d 1355 (Colo. 1983); Dye Construction Co. v. Dolan, 589 P.2d 497 (Colo. App. 1978); Young v. Golden State Bank, 632 P.2d 1053 (Colo. App. 1981).

<sup>2</sup>Section 39-26-117(1)(b), C.R.S.

Ordinance Nos. 4873 (1984); 5001 (1986).

### 3-2-28 Liens on Construction Improvements.

(a) The full amount of unpaid taxes arising from and required to be reported on construction of personal property affixed to real property under this chapter, together with interest and penalties as herein provided, are a first and prior lien on the property of the taxpayer and take priority over all other liens of whatsoever kind and nature, except for liens for general taxes created by state law and for pre-existing liens or claims of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice of lien provided for in Subsection 3-2-27(c), B.R.C. 1981.

(b) The city building inspector shall not make a final inspection on or issue a certificate of occupancy for any construction project unless a person has paid or arranged with the city manager to pay all taxes due under this chapter on all lumber, fixtures, and any other building materials and supplies used in or connected with the construction, reconstruction, alteration, expansion, modification, or improvement of any building, dwelling, or other structure or improvement to real property within the city.

### 3-2-29 Sale of Business Subject to Lien.

(a) Any person who sells a business or stock of goods or quits business shall complete and file the return required by this title within ten days of the date on which such person sold the business or stock of goods or quit business and indicate that it is a final return, that the business is sold, and the name and address of the purchaser of the business.

(b) A purchaser of a business who has acquired the furniture, fixtures, and equipment of the business and engages in a similar business shall withhold sufficient funds from the purchase money to cover the amount of taxes, penalties, and interest imposed by this title due and unpaid until the former owner provides a receipt from the city manager that such taxes, penalties, and interest have been paid. If taxes, penalties, and interest are due and unpaid after the ten day period herein provided, such purchaser of the business is liable for the payment of the taxes, penalties, and interest imposed by this title due and unpaid to the city to the same extent as the seller of the business or stock of goods. But the purchaser of the business is not liable for such taxes, penalties, and interest unless, within sixty days of the date that the final return is filed, the manager files a notice of lien in the office of the clerk and recorder of the county where the property is located, stating the amount of taxes, penalties, and interest due or otherwise gives written notice to the purchaser of the business of the amount of taxes, penalties, and interest due.

(c) Any person who obtains by purchase, foreclosure sale, or otherwise, except at a sale conducted pursuant to Subsection 3-2-32(e), B.R.C. 1981, any goods, stock in trade, or business fixtures owned, leased, or used by any person takes them subject to any lien of the city for any delinquent taxes owed by the prior owner of the property and is liable to pay all delinquent taxes of the prior owner, but only up to and including the property so acquired.

Ordinance No. 4873 (1984).

### 3-2-30 Certificate of Discharge of Lien.

(a) If any real or personal property is subject to a lien for payment of tax due to the city under this title, the city manager may issue a certificate of discharge of any part of the property subject to the lien if the manager finds that the fair market value of that part of such property remaining subject to the lien is at least twice the amount of the unsatisfied tax liability plus all prior liens upon such property.

(b) If any real or personal property is subject to a lien for payment of tax due to the city under this title, the city manager may issue a certificate of discharge of any part of the property subject to the lien if the manager is paid in partial satisfaction of the tax liability an amount determined by the manager to be not less than the value of the city's interest in the part of the property so discharged. In determining the value of the part of the property to be discharged, the manager shall consider the fair market value of the property and the value of the liens that have priority over the city's lien.

(c) A certificate of release of lien issued under this section is conclusive evidence that the city's lien upon the property is extinguished, but does not extinguish or release any portion of the lien on property not specified in the release.

### 3-2-31 Jeopardy Assessment.

(a) If the city manager finds that collection of the tax will be jeopardized for any reason, the manager may declare the taxable period immediately terminated, determine the tax, and issue notice and demand for payment thereof. Notwithstanding the provisions of Sections 3-2-25, "Hearings (Applies to Entire Title)" and 3-2-26, "Appeals from City Manager's Decision (Applies to Entire Title)," B.R.C. 1981, the tax shall then be due and payable forthwith, and the manager may proceed to collect the tax as provided in Section 3-2-32, "Enforcing the Collection of Taxes Due (Applies to Entire Title)," B.R.C. 1981.

(b) If the taxpayer subject to a jeopardy assessment provides security for payment of the tax satisfactory to the city manager, the manager may forego the jeopardy assessment collection proceedings.

### 3-2-32 Enforcing the Collection of Taxes Due (Applies to Entire Title).

(a) The city manager may issue a warrant directed to any employee, agent, or representative of the city or any sheriff of any county of the state, commanding such person to distrain, seize, and sell the personal property of the taxpayer in which the taxpayer has an ownership interest, except such property as is exempt from the execution and sale by any statute of the state of Colorado, for the payment of tax due together with interest and penalties thereon and costs of execution in the following circumstances:

(1)When any deficiency in tax is not paid within twenty calendar days from the date of the Notice and Final Determination, Assessment, and Demand for Payment and no hearing or extension or reconsideration has been requested;

(2)When any deficiency in tax is not paid within thirty days from the date of the Determination Notice and no appeal from such deficiency assessment has been docketed in any District Court in and for Boulder County or filed with the Colorado Director of Revenue during such time, except that if the city manager finds that collection of the tax will be jeopardized during such period, the manager may immediately issue a distraint warrant;

(3)When any deficiency in tax is not paid within the time prescribed in the judgment on any appeal to the District Court in and for Boulder County or the Colorado Director of Revenue;

(4)Immediately upon making a jeopardy assessment or issuing a demand for payment upon jeopardy assessment as provided in Section 3-2-31, "Jeopardy Assessment," B.R.C. 1981; or

(5)After or concurrently with the filing of a notice of lien as provided in Subsection 3-2-27(c), B.R.C. 1981.

(b) The city manager may apply to any judge of the municipal court for a warrant authorizing the manager to search for and seize property located within the city limits for the purpose of enforcing the collection of taxes under this title. Municipal judges shall issue such warrant after the manager demonstrates that:

(1)The premises to which entry is sought contain property that is subject to levy and sale for taxes due; and

(2)At least one of the preconditions of subsection (a) of this section have been satisfied, but if a jeopardy assessment has been declared under Section 3-2-31, "Jeopardy Assessment," B.R.C. 1981, the city manager sets forth the reasons that

collection of the tax will be jeopardized.

(c) The procedures to be followed in issuing and executing a warrant pursuant to this subsection shall comply with Rule 241(C) and (D) of the Colorado Municipal Court Rules of Procedure.

(d) The taxpayer may contest a warrant previously issued under the procedure provided by Rule 241(E) of the Colorado Municipal Court Rules of the Procedure, except that no proceeding to contest such warrant may be brought after five days prior to the date fixed for sale of the distrained property.

(e) The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, and shall leave a copy of such account, signed by the agent making such distraint, with the owner or possessor; at the owner's or possessor's usual place of abode with some family member over the age of eighteen years; at the owner's or possessor's usual place of business with a stenographer, bookkeeper, or chief clerk; or, if the taxpayer is a corporation, with any officer, manager, general agent, or agent for process, with a statement of the sum demanded and the time and place of sale. The agent charged with collection shall forthwith cause to be published a notice of the time and place of sale and a description of the property to be sold in a newspaper within the county wherein distraint is made, or, in lieu thereof and in the discretion of the city manager, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made, and copies thereof to be posted in at least two other public places within said county. The time fixed for the sale shall not be less than ten days nor more than sixty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. The sale may be adjourned or postponed from time to time by the agent or sheriff, if the agent or sheriff deems it advisable, to a date certain but not for a time to exceed in all ninety days from the date first fixed for the sale. When any personal property is advertised for sale under distraint, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the property at not less than a fair minimum price that includes the expenses of making the seizure and of advertising the sale. If the amount bid for the property at the sale does not equal the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased for the city. The property so purchased may then be sold by the agent or sheriff under such regulations as may be prescribed by the city manager for disposing of city property. The goods, chattles, or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, the amount due is paid together with the fees and other charges, or they may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.

(f) In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate is prima facie evidence of the right of the agent or sheriff to make such sale and conclusive evidence of the regularity of the proceedings in making the sale; it transfers to the purchaser all right, title, and interest of the delinquent taxpayer in and to the property sold. Where such property consists of certificates of securities or other evidence of indebtedness in the possession of the agent or sheriff, the taxpayer shall endorse such certificates to the purchaser thereof and supply the purchaser with any proof of the taxpayer's authority to transfer or with any other requisite that may be necessary to obtain registration of the transfer of the certificate. Any surplus remaining above first the city's taxes, penalties, interest, costs, and expenses of making the seizure and of advertising the sale and then any amounts distributed pro rata to other jurisdictions under recorded sales and use or personal property ad valorem, tax liens shall be returned to the property owner or such person having a legal right to the property and, on demand, the city manager shall render an account in writing of the sale.

(g) In any case where a taxpayer has refused or neglected to pay any tax due to the city under this title and lien has been filed as provided in Subsection 3-2-27(c), B.R.C. 1981, the city manager may certify the amount of the tax due and unpaid interest, together with ten percent of the delinquent amount for costs of county collection, to the Boulder County Treasurer to be assessed and collected in the same manner as general taxes are assessed and collected, as provided in Section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.

Ordinance Nos. 4873 (1984); 5430 (1991).

### 3-2-33 Recovery of Unpaid Tax by Action at Law.

(a) In addition to other remedies provided in this title, the city manager may also treat any such taxes, penalties, or interest due and unpaid as a debt due to the city from the taxpayer. If a taxpayer fails to pay the tax, or any portion thereof, or any penalty or interest thereon when due, the manager may recover at law the amount of such taxes,

penalties, and interest in a county or district court of the county where the taxpayer resides or has a principal place of business that has jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the manager as herein provided is prima facie proof of the amount due.

(b) Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff. In any such proceedings no bond shall be required of the city manager, nor shall any sheriff require of the manager an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The manager may also prosecute appeals or writs of error in such cases without the necessity of providing bond therefor.

(c) In any case where a taxpayer has refused or neglected to pay any tax, penalty, or interest due to the city under this title and a lien has been filed upon any real or personal property, the city manager may cause a civil action to be filed in the district court of the county in which is situated any such property subject to said lien to enforce the lien and subject any real or personal property or any right, title, or interest in such property to the payment of the amount due. The court shall decree a sale of such real property and distribute the proceeds of such sale, according to the court's findings concerning the interest of the parties and of the city. The proceedings of such action, the manner of sale, the period for and manner of redemption from such sale, and the execution of deed of conveyance shall be in accordance with the law of foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the property involved in such action if equity so requires.

(d) Any person having a lien upon or any interest in any real or personal property referred to in this section under or by virtue of any instrument duly filed of record in the office of the county clerk and recorder of the county in which such property is located prior to the filing of the notice that created a lien upon such property for taxes, penalties, or interest or any person purchasing such property at a sale to satisfy such prior lien or interest may make a written request to the city manager to file a civil action as provided in this section. If the manager does not file such civil action within two months after receiving such written request, such person may file a civil action in the district court of any county where any such property is situated asking for a final determination of all claims of the city to and all liens of the city upon the property in question. Service of the process in such action upon the city shall be made upon the manager or an agent thereof. The court shall in such civil action adjudicate the matters involved therein in the same manner as in the case of civil actions filed under subsection (c) of this section.

### 3-2-34 City may be a Party Defendant.

In any action affecting the title to real estate or the ownership or rights to possession of personal property, the city may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein, and in any such action service of summons upon the city manager or any person in charge of the manager's office is sufficient service upon the city.

### 3-2-35 Injunctive Relief.

The city manager may seek injunctive or other equitable relief in any court of competent jurisdiction to enforce provisions of this title.

### 3-2-36 Obligations of Fiduciaries and Others.

(a) For the purpose of facilitating settlement and distribution of estates, trusts, receiverships, other fiduciary relationships and the assets of corporations in the process of dissolution or that have been dissolved, the city manager may agree with the fiduciary or surviving corporate directors upon an amount of taxes due from the decedent or from the decedent's estate, the trust, receivership or other fiduciary relationship, or corporation for any of the periods of tax liability under this title. Payment in accordance with such agreement fully satisfies the tax liability for the periods that the agreement covers, unless the taxpayer has committed fraud or malfeasance or misrepresented a material fact regarding the tax or liability therefor.

(b) Except as provided in subsection (d) of this section, any personal representative of any decedent or the estate of a decedent, any trustee, receiver, or other person acting in a fiduciary capacity, or any director of a corporation in the process of dissolution or that has been dissolved who distributes the estate or fund under such person's control without



having first paid any taxes covered by this title due from such decedent, decedent's estate, trust estate, receivership, or corporation and that may be assessed within the periods authorized by this title is personally liable to the extent of the property distributed by such person for any unpaid taxes of the decedent, decedent's estate, trust estate, corporation and that may be assessed within the periods authorized by this title is personally liable to the extent of the property distributed by such personal estate, a trust estate, or fund and the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund, or corporation is liable under this title to the same extent that the decedent, trust estate, fund or corporation is liable under this title.

(c) The distributee of a decedent's estate, a trust estate, or fund and the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund, or corporation is liable under this title to the same extent that the decedent, trust estate, fund or corporation is liable under this title.

(d) If a tax under this title is due from a decedent or the decedent's estate, personal liability of the persons set forth in this section remains in effect only if a determination of the tax due is made and notice and demand therefor issues within eighteen months after the decedent's personal representative files with the city manager a written request for such determination, filed after it has filed the decedent's final return or the decedent's estate's return to which the request applies. A request for determination under this subsection does not extend the otherwise applicable period of limitation.

(e) If a tax under this title is due from a corporation that is in the process of dissolution or has been dissolved, personal liability of directors or stockholders as provided in this section remains in effect only if a determination of the tax due is made and notice and demand therefor issued within eighteen months after the corporation files with the city manager a written request for such determination, filed after it has filed the corporation's return, but only if the request states that the dissolution was begun in good faith before the expiration of the eighteen month period and the dissolution and the dissolution is completed. A request for determination under this subsection does not extend the otherwise applicable period of limitation.

### 3-2-37 Violations of Tax Chapter.

(a) No taxpayer shall fail or refuse to make any return required to be made, make any false or fraudulent return or any false statements in any return, fail or refuse to pay to the city manager any taxes collected or taxes, penalties, or interest due to the city, evade the collection and payment of the tax in any manner, fail to keep or disclose records required by this title, or violate any of the requirements of this title.

(b) Each and every twenty-four hours during which any violation of this title continues constitutes a distinct and separate violation thereof subject to the penalties prescribed in Section 5-2-4, "General Penalties," B.R.C. 1981.

### 3-2-38 Limitations.

(a) Except as otherwise provided in this section, the taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this title shall not be assessed, nor shall credit be taken, notice of lien be filed, distraint warrant be issued, bond be collected upon, suit for collection be instituted, or any other action be commenced to collect the taxes more than three years after the date on which the tax was payable. Nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, when a notice of lien regarding such taxes was filed prior to the expiration of such period, in which case the lien shall continue for only one year after the filing of notice thereof.

(b) Proceedings for collection of taxes, interest, and penalties may be commenced at any time in the case of a false or fraudulent return filed with the intent to evade tax and in the case of a taxpayer who fails to file a return as required under this title.

(c) For purposes of this section, a tax return filed before the last day prescribed by law or regulation issued under this title for filing of returns shall be considered to be filed on such last day.

(d) When before the expiration of the time prescribed in this section for the assessment of tax, both the city manager and

the taxpayer have consented in writing to any assessment after such time, the tax may be assessed at any time prior to the expiration of the agreed upon time. The period to which the manager and taxpayer agree may be extended by subsequent agreement in writing made before the expiration of the previously agreed upon time.

(e) Nothing in this section shall be construed to limit any right accrued or to revive any liability barred by any statute on the effective date of this title.

(f) In the case of failure to file a return, the sales tax, use tax, or both may be assessed and collected at any time.

Ordinance No. 4962 (1986).

### 3-2-39 Earmarked Revenues.

(a) The amount of the sales and use tax revenue attributable to the levy and collection of one cent of sales and use tax for each fiscal year shall be set aside in a separate fund entitled "Open Space and Street Fund," and expended by the city only as follows:

(1) To pay a portion of the tax refund program as provided under Chapter 3-5, "Tax Refund Program," B.R.C. 1981, as amended, such portion to be \$160,000.00 for 1984, and an equivalent amount as adjusted by the change in the Consumer Price Index each year thereafter.

(2) All other monies accruing to the open space and street fund shall be expended only for the acquisition of open space real property or interest in real property, or for the payment of indebtedness incurred for such acquisition, and for such expenditures as may be necessary to protect open space properties or interest in real properties so acquired from any and all threatened or actual damages, loss, destruction, or impairment from any cause or occurrence, and also for projects related to transportation or for or related or appurtenant to transportation services or facilities, including, without limitation, studying, acquiring, constructing, providing, operating, replacing, or maintaining transportation services or facilities and all services and facilities incidental or appurtenant thereto, and the payment of indebtedness for any such expenditures.

(b) Prior to the adoption of the city's budget for the succeeding fiscal year, the city council shall review the revenues and expenditures of the open space and street fund in order to assure that the period 1968-1969 and in every succeeding two-year period, the expenditures of monies during said period for acquisition of open space real property or interests in real property, or the payment of indebtedness incurred therefor, and the expenses as may be necessary to protect open space real properties or interests therein so acquired from any and all threatened or actual damages, loss, destruction, or impairment from any cause or occurrence, do not exceed forty percent of the revenues accruing or expected to accrue to said fund during said two-year period, exclusive of that portion necessary to pay the portion of the tax refund program specified in paragraph (a)(1) of this section and exclusive of that portion authorized for transfer and transferred to the general fund; and to assure that in such two-year period the expenditures of monies for transportation and related or appurtenant facilities or service or indebtedness therefor described in paragraph (a)(2) of this section, do not exceed sixty percent of the revenues accruing or expected to accrue to said fund during such two-year period, exclusive of that portion necessary to pay the portion of the tax refund program specified in paragraph (a)(1) of this section and exclusive of that portion authorized for transfer and transferred to the general fund of the city.

(c) Pledged sales and accommodations tax revenue, as defined in the cooperation agreement dated May 7, 2003, between the city, the City of Boulder Central Area General Improvement District, and the Boulder Urban Renewal Authority, means the 1.6 percent sales tax levied by the city on the retail sale of taxable goods and services within the Boulder Urban Renewal Authority's 9th and Canyon Tax Increment Area, which 1.6 percent includes the 1.0 percent general sales tax allocable to the city's general fund and the 0.6 percent transportation sales tax allocable to the city's transportation fund, each of which is a permanent city sales tax and does not have a stated expiration date, and the 5.5 percent accommodations tax in the nature of a sales tax levied by the city on the price paid for the rental of hotel rooms located within the tax increment area; but this shall not include any such tax if the same is repealed. This revenue is pledged to the Authority to support the District's bonds for the facility it constructed in the Tax Increment Area.

(d) From January 1, 1993 through December 31, 1993 the amount of sales and use tax revenue attributable to the levy and collection of the 0.15 percent of sales and use tax shall be used for general fund purposes. From January 1, 1994 through December 31, 1998, and thereafter for any remaining balances and interest thereon, the amount of sales and use tax revenue attributable to the levy and collection of the 0.15 percent of sales and use tax shall be set aside and used only for the following purposes:

(1) Forty percent shall be paid into a human services fund, to be expended only for human services, including, without limitation, programs for health care, child care, mental health services, services for youth, services for the elderly and services for the disabled, prevention and mitigation of childhood physical and sexual abuse and domestic violence, emergency shelter for the homeless, family support services, job training, job development, and job placement. All such expenditures shall be consistent with a human services master plan to be adopted by the city council.

(2) Twenty percent shall be paid into a parks and recreation fund, to be expended as set forth in this paragraph. Prior to the issuance of bonds supported by this fund, the monies in the fund shall be paid into the permanent park and recreation fund. After the issuance of such bonds, the monies of this fund shall be expended by the city council for the payment of the principal of and premium, if any, and interest and reserves, if any, on such bonds, for the following parks and recreation projects: softball fields, soccer fields, and other parks and recreation capital improvements, including, without limitation, refurbishment of parks and recreation facilities, together with all necessary incidental appurtenant facilities, structures, furnishings, and equipment. Any monies remaining in the fund on the day following any principal payment date on the bonds shall be expended by the city council to defray operations and maintenance costs associated with the softball fields, soccer fields, and other parks and recreation capital improvements, to the extent reasonably required therefor. Any monies thereafter remaining in the fund shall be paid into the permanent park and recreation fund.

(3) Eight percent shall be paid into an environmental fund, to be expended only for environmental projects, including, without limitation, a recycling center, a hazardous waste drop-off center, and a pollution prevention program.

(4) Eight percent shall be paid into a youth opportunity fund, to be expended only for culture and arts programs, recreation, sports, and other youth activities for young persons who are otherwise underserved in such programs, and to enhance the availability and attractiveness of such programs to young persons. Youth as used in this paragraph means persons under the age of twenty-one, or through graduation from high school, whichever comes first.

(5) Four percent shall be paid into an arts and cultural fund, to be expended only for the arts, culture, and maintenance of city buildings used for the arts and culture, including, without limitation, stabilization of arts and cultural services delivery entities and development of arts and cultural programs, which may include, without limitation, community outreach, arts in education, and access to arts and culture by underserved populations. All such expenditures shall be consistent with an arts and culture master plan and other relevant plans to be adopted by the city council.

(6) The remaining twenty percent shall be available for appropriation for basic municipal services, including, without limitation, parks and recreation facilities refurbishment and municipal facilities refurbishment, but if the city council finds that basic municipal services can be funded adequately without use of all or part of this portion of the tax, then the portion of the tax not allocated to basic municipal services shall be earmarked for and distributed to the five funds listed above. After the issuance of bonds supported by the revenues described in this paragraph, the revenues shall be expended by the city council for the payment of the principal of, and premium, if any, and interest and reserves, if any, on such bonds, together with all necessary incidental appurtenant facilities, structures, furnishings, and equipment. Any such revenues on the day following any principal payment date on the bonds may be used for any basic municipal services purpose.

(7) For the year 1999 and thereafter, the city council may, after considering the recommendations of a citizen review committee appointed for that purpose, adjust the earmarking set forth in this subsection, except to the extent required for the repayment of bonds.

(e) Effective January 1, 1988, the amount of the sales and use tax revenue attributable to the levy and collection of 0.38 percent of sales and use tax and required for payments on related bonds shall be set aside as follows:

Beginning at such time as any bonds are issued by the city pursuant to authority granted by the electors in November,

1987, for the purpose of acquiring any real or personal property or any interest therein and constructing and equipping library buildings, not in a floodway, the city manager shall determine the amount, if any, reasonably necessary for the payment within the next payment period following such determination of principal, interest, premium, if any, and reserves on such bonds and shall set aside a pro rata portion of such monies in a separate "Library Bond Fund." The monies of said fund shall be expended by the city council solely for the above-stated principal, interest, premium, and reserve bond payment purposes. The residual amount shall be added to the general fund of the city.

(f) From January 1, 1990 through December 31, 2018, the amount of the sales and use tax revenue attributable to the levy and collection of 0.33 percent of sales and use tax shall be set aside in an open space fund for the acquisition, maintenance, preservation, retention, and use of open space lands as defined in Section 170 of the charter, and the payment of any indebtedness and tax refunds related thereto.

(g) From January 1, 1996 through December 31, 2015, the amount of the sales and use tax revenue attributable to the levy and collection of 0.25 percent of sales and use tax approved by the electors in November, 1995, shall be set aside in a separate fund and pledged for the payment of the principal, interest, and premium, if any, on the park bonds concurrently approved by the electors, and then for: development, operation, and maintenance of the land and improvements purchased or constructed with the proceeds of the bonds; renovation and refurbishment or replacement of four pools; renovation and replacement of recreation facilities, playgrounds, mountain park trails, and the civic park complex; improvements to recreation centers and development of new recreation projects to be determined in the future through the master planning process by the City Council; maintenance of the community park site in north Boulder; development of a mountain parks environmental education program; and for renovation of city-owned historical and cultural facilities; with the remainder being dedicated for parks and recreation purposes.

(h) From January 1, 1998 through December 31, 2004, the amount of the sales and use tax revenue attributable to the levy and collection of 0.15 percent sales and use tax approved by the electors in November, 1997, shall be used for public safety purposes.

(i) From January 1, 2004 through December 31, 2019, the amount of sales and use tax attributable to the levy and collection of 0.15 percent sales and use tax approved by the electors in November, 2003, shall be used to provide additional revenues for open space purposes as defined in the charter, and the payment of any indebtedness therefor.

Ordinance Nos. 4812 (1984); 4879 (1984); 5015 (1986); 5047 (1987); 5222 (1989); 5492 (1992); 5780 (1996); 5958 (1997); 5958 (1997); 7323 (2003).

### 3-2-40 Participation in Simplification Meetings and Central Registry.

(a) The city manager will cooperate with and participate on an as-needed basis in a permanent statewide sales and use tax committee convened by the Colorado Municipal League which is composed of state and municipal sales and use tax officials and business officials. Said committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise.

(b) In order to initiate and maintain a central registry of sales and use tax ordinances, the city manager will file with the Colorado Municipal League a copy of the city's sales and use tax chapter prior to the enactment of this ordinance.

(c) In order to keep the central registry current, the city manager will file any proposed amendment to the sales and use tax chapter with the Colorado Municipal League prior to its effective date.

(d) Failure to file any such ordinance or amendment shall not invalidate such ordinance or amendment.

Ordinance No. 5430 (1991).

### 3-2-41 Revenue Changes.

Pursuant to Article X, Section 20 of the Colorado Constitution, the qualified electors of the City of Boulder authorize the city to collect, retain, and expend the full proceeds of the city's sales and use tax, admissions tax, and accommodations tax, and all available non-federal grants, notwithstanding any state restriction on fiscal year spending, including, without limitation, the restrictions of Article X, Section 20 of the Colorado Constitution. Such taxes and grants shall be excluded from the definition of fiscal year spending contained in Article X, Section 20 of the Colorado Constitution on and after January 1, 1993. Nothing in this section shall be interpreted to authorize any increase in the rate of taxation of the sales and use tax, the admissions tax, or the accommodations tax, without a vote of the people if and when required pursuant to Article X, Section 20 of the Colorado Constitution.

Ordinance No. 5579 (1993).

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